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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1959.

No. 555 15

PETER CASELLA,

Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

STANFORD SHMUCKLER,
1525 Spruce Street,
Philadelphia 7, Pa.,
Attorney for Petitioner.

International, 711 So. 8th St., Phila. 47, Pa.

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Peter Casella, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on October 2, 1959.

OPINION BELOW.

The opinion of the court below has not been officially reported. It is here separately presented.

JURISDICTION.

The judgment of the Court of Appeals was entered on October 2, 1959 (Appendix A). A petition for rehearing was denied November 2, 1959 (Appendix B). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

I. Where there is no evidence offered to show that narcotics had been illegally imported into the United States nor that the petitioner knew them to be illegally imported, and where the Government's evidence shows that petitioner had never been in physical possession of the narcotics, can petitioner's convictions be sustained by invoking the presumption of guilt set forth in 21 U. S. C. § 174, which is applicable only under proof of possession, where the evidence shows only that petitioner conspired with other defendants who were in possession of the narcotics?

II. Where petitioner was convicted on three substantive counts as well as a conspiracy count contained in one indictment, and where the substantive offenses constituted the basis of the conspiracy, did the imposition of maximum sentences on all four counts, some of which are to run consecutively, constitute an improper accumulation of sentences?

III. Was petitioner deprived of a fair trial in the setting of this case, where the Trial Judge, sitting without a jury, threatened to impose heavy sentences if the trial lasted beyond a certain date, and where the trial did last beyond that date, and petitioner, a first narcotics law offender, received maximum sentences on all counts?

STATUTES INVOLVED.

21 U. S. C. § 173 provides as follows:

> "§ 173. Importation of narcotic drugs prohibited; exceptions; crude opium for manufacture of heroin; forfeitures.
>
> It is unlawful to import or bring any narcotic drug into the United States or any territory under its control

or jurisdiction; except that such amounts of crude opium and coca leaves as the board finds to be necessary to provide for medical and legitimate uses only, may be imported and brought into the United States or such territory under such regulations as the board shall prescribe, but no crude opium may be imported or brought in for the purpose of manufacturing heroin."

21 U. S. C. § 174 provides as follows:

"§ 174. Same; penalty; evidence.

"Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years, and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under Section 7237(c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

"Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

STATEMENT OF THE CASE.

Petitioner Casella was convicted on four counts in a five count indictment after a trial before a District Court sitting without a jury. Counts 1, 2 and 3 charged petitioner and others with unlawfully, wilfully and knowingly receiving, concealing, buying, selling, and facilitating the transportation, concealment and sale of narcotics after the said narcotics had been imported into the United States contrary to law, and knowing of such importation, in violation of Sections 173 and 174 of Title 21 of the U. S. Code. Each of those counts related to separate transactions. Count 1 concerned the delivery of heroin on October 21, 1957; count 2 concerned the delivery of heroin on December 11, 1957, and count 3 concerned the delivery of smoking opium on December 19, 1957. Count 5 charged the petitioner and several others, including the other defendants named in the first three counts, with conspiring to violate the above sections by unlawfully, wilfully and knowingly receiving, concealing, buying, selling, and facilitating the transportation, concealment or sale of narcotics after the narcotics had been imported into the United States contrary to law, knowing that the narcotics had been so imported. The indictment also listed thirty-two overt acts, including those constituting the substantive offenses charged in the first three counts, alleged to have been undertaken in pursuance of the conspiracy charged in count 5.

The Government's case was based on the testimony of narcotics agents, two of whom, Agents Marshall and Picini, introduced themselves under assumed names to defendant Santore in Philadelphia on February 26, 1957, expressing an interest in purchasing narcotics for purposes of resale (13a). They testified that after several months during which they made purchases of narcotics through Santore from Malfi and Valli (neither of whom were named in this indictment and none of which transactions were involved in this case and all of which occurred prior to the date on

which the conspiracy charged in count 5 was alleged to have begun), they eventually prevailed on Santore to introduce them to his New York "connection." Santore finally offered to make the introduction in return for $2,000.

On October 16, 1957, Santore introduced the agents to petitioner Casella, at which time they discussed the purchase of narcotics (15a). Four deliveries of narcotics were made to the agents before all of the defendants were arrested.

On October 21, 1957 a quantity of heroin was delivered by Santore to Agent Marshall, who placed a package in the trunk of Marshall's car in New York. There was no evidence that the petitioner Casella was in the vicinity at the time of delivery (17a-18a). Agent Marshall informed Santore that he was unable to pay for the narcotics because Picini, who had the funds, was in a Trenton hospital. This story was repeated to Casella later, who finally agreed that Marshall could keep the drugs on consignment if Casella's "New York partners" consented. Casella later met several of the other defendants, held a discussion, and later returned to Marshall and Santore. He told them that he had convinced the others that Marshall could keep the package, but that full payment must be made by October 23, 1957 (17a-19a).

During the month of November, 1957, the agents, Santore and Casella discussed sales of opium, but nothing came of the discussions. The agents testified that Casella stated that this opium was "the best smoking opium available, was supposed to come from Turkey and was called red Turkey smoking opium" (21a).

After further discussions, on December 11, 1957, Casella obtained from Agent Picini a key to the agents' room in the Hotel Edison, after which Casella and Agent Marshall drove to an apartment building on 69th Street, in which defendant LoPiccolo had an apartment. Casella left the car and returned within fifteen or twenty minutes. The agent testified that Casella told him he had delivered the

key to his sources and delivery would be made that night. That evening all four of them went to the agents' room and saw that the appointed drawer was empty. They adjourned to the lobby, where they waited for approximately fifteen minutes when Casella instructed the agents to go to the room. Agent Marshall went to the room and found in that drawer a package, later identified as containing heroin (23a-25a, 37a-39a).

On December 19, 1957, Casella, Santore and the two agents drove to the apartment building on 69th Street, where Casella and Santore left the car and entered the apartment building. Shortly thereafter, Santore returned to the car and gave a package to Agent Marshall, which was later identified as containing smoking opium (26a-27a).

On January 23, 1958, Santore delivered a quantity of heroin to Agents Marshall and Picini in the King Cole Motel in New Jersey. This delivery is not involved here. Immediately after the delivery, on a signal from agents Marshall and Picini, other agents came in and placed Santore under arrest. Casella was nowhere in the vicinity (29a-30a, 43a).

These transactions resulted in indictments of the various participants in New Jersey, Brooklyn and New York. Petitioner was tried in the District Court of New Jersey and the Southern District of New York. On July 3, 1958, the District Judge for the Southern District of New York found all of the defendants, including petitioner Casella, guilty on all counts, and on July 31, 1958, sentenced petitioner Casella as follows:

> "I will sentence him on Counts 1 and 2 to 20 years, and on Counts 3 and 5—the sentences on Counts 1 and 2, 20 years on each, but concurrently with each other. The sentence on Counts 3 and 5 is also 20 years each, and I will make that concurrent with each other, but consecutively to the sentence on Counts 1 and 2, so that the total sentence will be 40 years, and I will say this in front of Mr. Casella, that if he wishes he may.

make an application to reduce the sentence, provided proof is shown me that he is making a genuine effort to cooperate, and he knows what I mean by that.

"You can save yourself a lifetime in jail, Mr. Casella, but the only one who can help you now is yourself" (77a).

Subsequently, petitioner Casella was convicted on four counts of an indictment in the District Court of New Jersey, and was sentenced to a total term of twenty-five years, to be served concurrently with the first twenty-five years of the total sentence imposed by Judge Noonan. A petition for certiorari has been filed in this Court in that case, *Casella, Petitioner, v. United States of America*, October Term, 1959, No. 521.

REASONS FOR GRANTING THE WRIT.

The issues involved in this case are so troublesome that a panel of such distinguished jurists as Circuit Judges Learned Hand and Waterman, and District Judge Byers, differed widely in their conclusions, and the issues are so important and recurring in Federal criminal law and the enforcement of narcotics laws, that this Court should review petitioner's convictions.

I.

Petitioner was charged in three substantive counts with dealing in narcotics illegally imported and which he knew to be illegally imported. Yet not one word of evidence was offered to show that the narcotics were imported illegally nor that he knew them to be so.[1]

The Government tried its case solely on the theory that the physical possession of one conspirator is sufficient

1. There is a statement by petitioner interpreted by the Court of Appeals to show knowledge as to the source of opium involved in Count 3 only.

to charge all who participate in the conspiracy with possession of the narcotics and that, therefore the statutory presumption of guilt applies against all conspirators, even against one not in possession. However, as to count 3 the Court of Appeals affirmed petitioner's conviction on the assumption that there was sufficient evidence to support the finding that the opium was illegally imported and that Casella knew it, because of his statement that the opium was called red Turkey and was of the best quality, just as it came off the boat, and was in port but not yet unloaded. It is respectfully submitted that the Court of Appeals misinterpreted the evidence. The agents testified[2] that on November 7, 1957, Casella told them "this opium was the best smoking opium available, was supposed to come from Turkey and was called red Turkey smoking opium" (21a, 34a). They also testified that Casella told them "he could supply us with anywhere from a half a kilo to a ton of pure, and that we would get it just as it came off the boat" (32a) and that Casella "reiterated that we should take the five kilos and that the heroin—the opium would not be in—was in port, but it had not been unloaded there, and that as soon as they had gotten it, then we would get a sample of it" (38a). It is respectfully submitted that none of those statements are evidence of knowledge of the source of the opium but are mere "puffing" concerning the quality.

On the other hand, the Court of Appeals recognized that as to counts 1 and 2 there was no evidence in the case that the heroin was illegally imported or that petitioner knew it to be contraband. The Court of Appeals reviewed all of the convictions and set forth a new and remarkable test as to what constitutes possession within the meaning of the narcotics statutes involved.

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2. The agents' version of Casella's statement differed slightly, but neither quoted Casella as stating categorically that the opium did come from Turkey, merely that it was *supposed* to come from Turkey (compare Marshall's version, 21a, with Picini's version, 34a).

As to petitioner Casella, the majority opinion of the Court of Appeals concluded that personal custody or manual possession of narcotics is not essential to bring the presumption into operation against him. The majority admitted that the authority for this novel doctrine is not conclusive and could be classified as dictum. The majority opinion concludes that although Casella was not in sole control of the heroin, he was a full partner in the conspiracy, not simply a hired agent, and that he had at least partial control over what was to be done with the contraband handled by the group, and concluded from this that he could be charged with the presumption arising from the possession of another.

Thus, the majority opinion stretches the plain meaning of the statute far beyond its intent. As noted by Judge Learned Hand (dissenting as to the application of this doctrine to two other defendants in the case but not to petitioner), the statute does not use the words "possession or control" as Congress did in other statutes. Furthermore, the majority sustains petitioner's conviction on the substantive counts solely on proof that petitioner was part of a conspiracy, of which petitioner was also convicted, and for which he received separate consecutive sentences.

Thus, this case poses squarely a question never decided in this Court—the question of whether the possession of one defendant is sufficient to make the statutory presumptions arising from possession applicable to co-defendants.

This Court has recently determined that direct evidence of possession is essential to take advantage of the presumption of Section 174. *Harris v. United States*, 359 U. S. 19 (1959). In that case this Court sustained a conviction and consecutive sentence under 21 U. S. C. § 174 and 26 U. S. C. § 4704(a) arising from one transaction. There was direct proof of possession in that case. The Court used the words "direct evidence" seven times in that case in discussing the application of the presumptions arising from possession. In no case has this Court

ever sustained a conviction resting solely on a presumption based on possession of a third party.

The Courts of Appeals likewise have refused to apply presumptions without direct evidence of possession by the person charged. See *United States v. Landry*, 257 F. 2d 425 (7th Cir. 1958) (the possession of narcotics by defendant's paramour held insufficient despite defendant's confession that the narcotics were his); *Jackson v. United States*, 250 F. 2d 772 (D. C. Cir. 1957) (heroin found in T. V. set in defendant's nephew's room held insufficient even though defendant owned key to front door and room). In *Willsman v. United States*, 286 Fed. 852 (8th Cir. 1923), defendant arranged a purchase of narcotics by an undercover Federal Agent from a third person. The Court held that without evidence that the third person was defendant's agent or partner, then the possession of the third person was not sufficient to invoke the presumption. Also see *Grantello v. United States*, 3 F. 2d 117 (8th Cir. 1924) (possession of defendant's estranged wife in defendant's former residence held insufficient to invoke presumption). Compare *United States v. Wainer*, 170 F. 2d 603 (7th Cir. 1948) (the evidence that defendant arranged purchase of beer by his brother's corporation held insufficient to constitute possession of said beer, which had been stolen in interstate commerce).

If Congress wanted to achieve the result suggested by the majority opinion, it could very easily provide that the possession of one co-conspirator should give rise to the presumption. Without passing on the constitutionality of such a statute, doubt as to which is expressed by Judge Learned Hand, Congress did not so provide here.

Those cases holding that circumstantial evidence of possession is sufficient to invoke a presumption are inapposite in this case. No circumstantial evidence of physical possession or control was here offered, nor was this case tried on that theory.

It is impossible for petitioner to explain possession "to the satisfaction of the jury," as required by the statute, if he never had physical possession. Therefore application of the statutory presumption is not permissible here to support a finding of guilty.

There was no evidence, nor was the case submitted to the trier of fact, on the theory that the persons in possession of the narcotics for which petitioner Casella was convicted were agents of the petitioner. See *Amendola v. United States*, 17 F. 2d 529 (2d Cir. 1927). The position of co-conspirators is the converse of that of the master-servant relationship.

Furthermore, the Court of Appeals obviously treats control over the incidents of sale and mechanics of delivery as equivalent to control over the narcotics themselves.

While under some circumstances control may constitute possession, such control must constitute dominion over the narcotics themselves to constitute possession within the meaning of these statutes. Control over the incidents of sale and mechanics of delivery does not constitute sufficient control over the narcotics themselves to invoke the presumption. See *United States v. Landry, supra; Jackson v. United States, supra;* and *Willsman v. United States, supra.* Compare *Brown v. United States*, 222 F. 2d 293 (9th Cir. 1955) (dictum, since appellant Brown did have actual possession, handing two packets of heroin to the agent from a package he received from two women); *United States v. Hodorowicz*, 105 F. 2d 218 (1939) (involving contraband liquor).

The very concept of conspiring negates the suggestion that petitioner controlled or exercised dominion over Santore or the other conspirators, and the drugs themselves. Conspiring with others in the commission of a crime is the converse of controlling or exercising dominion over a principal. Yet this was the only theory on which the trier of fact could sustain petitioner's conviction.

Criminal statutes must be strictly construed. Where possession itself is made a criminal offense, it is essential that defendant's possession be conclusively shown. *People v. Levitt*, 301 N. Y. 113, 92 N. E. 2d 915, 917 (Ct. App. N. Y. 1950) and cases therein cited. This is of paramount importance where possession itself is made prima facie evidence of a criminal offense. As Judge Learned Hand noted:

> "As I read the paragraph, 'possession' by itself will support a conviction unless the accused 'explains the possession to the satisfaction of the jury', which in the end comes to saying that the burden of proof shifts to him to establish his innocence, once he is shown not only to be in 'possession' at the time of the forbidden dealings, but to have ever been in possession in the past. Assuming that such a statute would be constitutional which, I submit, is not wholly free from doubt, it appears to me that at least the language should be explicit that 'possession' has some other than the usual meaning. We must remember further that not only is this a criminal statute but that the penalties prescribed are extremely heavy".

Presumption cannot be constitutionally based on presumptions nor inferences on inferences. See *Rosenberg v. United States*, 120 F. 2d 935 (10th Cir. 1941); *United States v. Ross*, 92 U. S. 281 (1876); *Macket v. United States*, 90 F. 2d 462 (7th Cir. 1937).

The decision of the Court of Appeals as to the various defendants below is remarkable when the results are analyzed. The convictions of two of the conspirators (Narducci and Tarlentino) were reversed by the majority, with the concurrence of Judge Hand, even though one of those conspirators (Narducci) had narcotics in his actual physical possession, even though momentarily, and the other conspirator (Tarlentino) owned the car in which the narcotics were transported.

On the other hand, the conviction of another conspirator (Santore) was reversed as to the delivery involved in Count 2, again with the concurrence of Judge Hand, because he was not shown to have had a voice in deciding the disposition of the narcotics. (As a matter of fact, the record is completely devoid of any evidence as to who possessed the narcotics involved in Count 2. The evidence was entirely circumstantial, showing merely that the narcotics were found in the agents' room which Orlando entered some time after the key to that room had been delivered by petitioner Casella.)

The conviction of another conspirator (LoPiccolo) on that count was also reversed since there was no evidence of his control over the delivery.

Judge Hand further dissented from the convictions of two of the conspirators (Massi and D'Aria), as to whom the evidence, we submit, in terms of control was analogous to petitioner Casella. In fact, the majority notes that petitioner Casella referred to these two defendants as his "partners."

II.

Petitioner was sentenced to twenty years on each of counts 1 and 2 to run concurrently with each other, and twenty years on counts 3 and 5 to run concurrently with each other, but consecutively to the sentence on counts 1 and 2. This was the maximum sentence permissible under the statute as applied to a first offender. The sentencing judge stated, "that if petitioner Casella wishes, he may make an application to reduce the sentence provided proof is shown me that he is making a genuine effort to cooperate, and he knows what I mean by that" (77a).

It is apparent that the sentencing judge was cumulating the sentence by the mere verbal device of imposing separate sentences on substantive counts and on the conspiracy count which embraced the identical proof necessary to sustain the substantive counts. He imposed those sentences

not for legitimate purposes of punishment, but to force petitioner Casella to "cooperate," by which he apparently meant that Casella should testify concerning all he knows about the drug trafficking in which he was charged with participating.

Petitioner admits that ordinarily a defendant who is convicted of one act or a series of acts, which fall within the definition of several offenses, can be sentenced under each such statute provided the proofs required to sustain a conviction differ under each statute. *Gore v. United States*, 357 U. S. 386 (1958); *Cf. Palmero v. United States*, 112 F. 2d 922 (1st Cir. 1940). Appellant also recognized that ordinarily conspiracy is an offense distinct from a substantive crime and can be punished separately. *Parmagini v. United States*, 42 F. 2d 721 (9th Cir. 1930), *cert. denied*, 283 U. S. 818 (1931).

Yet the Second Circuit itself, speaking through Judges L. Hand, Swan and Chase, in *United States v. Mazzochi*, 75 F. 2d 497 (2d Cir. 1935), has "repeatedly expressed . . . disapproval of cumulating sentences by verbal devices. *Harrison v. United States*, (CCA) 7 F. (2d) 259; *Hartson v. United States*, (CCA) 14 F. (2d) 561; *Amendola v. United States*, (CCA) 17 F. (2d) 529; *Nash v. United States*, (CCA) 54 F. (2d) 1006."

This Court has reversed sentences imposed on seven counts of an indictment, each charging a conspiracy to violate the separate and distinct Internal Revenue Law, where the evidence showed one conspiracy to violate all the laws. *Braverman v. United States*, 317 U. S. 49 (1942). Cf. *United States v. Paiano*, 224 F. 2d 682 (2d Cir. 1955), where the Court affirmed cumulative sentences on conspiracy and substantive charges only because the trial court showed "scrupulous regard" for the rights of the defendant and the record was "wholly free from error". Also see *United States v. Hoffman*, 137 F. 2d 416 (2d Cir. 1943); *United States v. Trupuk*, 136 F. 2d 900 (2d Cir. 1943). Here it cannot be said that the trial Court showed "scrupulous

regard" for the rights of the defendant, nor that the record was "wholly free from error," as is demonstrated in Point 3 below.

III.

The record in this case was marked by one of the most shocking statements appearing in the record of any trial. On June 10, 1958, during the course of an objection by counsel for one of the other defendants, the trial judge stated:

> "The Court: I will sustain the objection. But we will be here until the end of July.
>
> "Mr. Edelbaum: It is very simple, if he asks a proper question, your Honor, without being here till the end of July.
>
> "The Court: For each day we are here after the end of June, if there is a conviction, each defendant will spend five years more."

The trial actually terminated on July 3, 1958. The sentences imposed were the maximum permissible under the statute for a first offender.

The Court of Appeals answered this contention by concluding that these remarks in context do not support a contention of prejudice and that there are no other indications of such an attitude on the part of the trial judge. However, it is respectfully submitted that even if the remark were said in jest, it is impossible to determine the effect of such a comment on other defense counsel who heard such remark. We are unable to say from this record whether or not the petitioner or other defendants were dissuaded from taking the stand because of the remark made here, whether cross-examination was curtailed, or whether any other rights to "a day in court" were jeopardized. Furthermore, this is not the only expression of this type during the course of the trial. On June 18th the trial judge remarked:

"The Court: I hope you do everything you can—and I know you will—to shorten the trial.

"Mr. Walsh: As I explained to Mr. Vitello—.

"The Court: I just want to say this. I have said this to counsel and I will say it to counsel again in open court. I have said it to all counsel inside, all at the same time, as you all know. A remark was made to me, 'Well, what have these defendants got to lose?' I say this. I am not making any promises to anybody under any circumstances, but if there were a plea of guilty or if there were a conviction, rather, here, after a trial, I would say that each of the defendants have an awful lot to lose, and if anybody thinks that just because, for instance, he got a 15-year entence to serve in some other district, that any sentence to run here would be ordered to run concurrently, he has another think coming. I am just saying that apropos of nothing in particular but, as I have said to the lawyers, if the lawyers have repeated it to the defendants and the defendants don't think that the lawyers are pulling their legs—.

"Mr. Stim: Your Honor, it is open at this time, not closed. Your Honor's mind is open at this time, not closed.

"The Court: There is no conviction forthcoming at this time, and I certainly put all the defendants in the same category, which would not be the proper thing to do, if you sat down and start to make distinctions" (75a).

Even earlier in the trial the Judge expressed his displeasure at the "waste of time," referring there to cross-examination of Agent Picini concerning payments to Casella and Santore, referring to such evidence as "nonsense" (48a-49a).

This remark occurred during a discussion of the relationship between Santore and petitioner Casella, and would have shed light upon the question of agency had the trial judge permitted further development. Yet now the conviction is sustained partly on a theory which the Court refused to permit to be developed.

Later the Court curtailed an objection by another defense counsel, with the comment, "Well, sit down. You are wasting time" (58a). At another point in the trial the Court cut off argument over one of its rulings, questioning counsel as follows: "Why argue the matter? You want to argue that I am wrong?" (R. 159).

Finally, when the Court was preparing to render its decision, counsel for one of the defendants was not present, yet when the Court was requested to wait for his arrival, it stated: "He has set forth his argument heretofore anyway, and I am quite sure there is nothing that Mr. Edelbaum could say that would change my views in any way" (R. 1827).

It is true that the judge was faced with a long trial commencing on June 3, 1958 and terminating July 3, 1958, with seventeen trial days during that period. Expedition in the handling of cases is certainly a virtue, but not at the expense of a fair trial. We are not at liberty to assume that the above expressions were made in a jocular manner nor that they did not prejudice the defendants in any manner.

This Court has reversed a conviction and a sentence following a plea of guilty for remarks of the trial Court, which seem less prejudicial than those involved here.

> "'The trial court's facetiousness casts a somewhat somber reflection on the fairness of the proceeding when we learn from the record that actually the charge of receiving the stolen saxophone had been dismissed and the prisoner discharged by the magistrate. But it savors of foul play or of carelessness when we find from the record that, on two others of the charges which

the court recited against the defendant, he had also been found not guilty. . . . We are not at liberty to assume that items given such emphasis by the sentencing court, did not influence the sentence which the prisoner is now serving." *Townsend v. Burke*, 334 U. S. 736 (1948).

It is interesting to note that, according to an article in the Philadelphia Inquirer on Wednesday, November 19, 1958, page 11, the Court of Criminal Appeals of England ordered to be freed from prison a once-popular singer, Joan Collier, because of the comment by Sir Gerald Dodson, the Recorder of London, when Old Bailey sentenced her to nine months' imprisonment for cashing a check delivered to her by mistake, "Certainly, for the time being she has sung her last ditty."

The issue here presented far transcends the fate of the appellant immediately involved. That issue concerns the adjudicatory procedure under Anglo-Saxon law. There is now added to the inherent hazards of litigation the further danger that counsel in criminal trials must meet judicial deadlines under threat of an additional penalty for each day the trial exceeds the deadline.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

STANFORD SHMUKLER,
1325 Spruce Street,
Philadelphia 7, Pennsylvania,
Attorney for Petitioner.

November, 1959.